

IN THE HIGH COURT OF BOMBAY AT GOA

APPLN. FOR APPOINTMENT OF ARBITRATOR NO. 7 OF 2006

M/S. R. B. S. CANDIAPARCAR, REP.
BY ITS PARTNER SHRI A. P.
KHANDEPARKAR

....Applicant

Versus

M/S. INOX LEISURE LTD., MUMBAI

....Respondent

Mr. U. S. Kolwalkar, Advocate for the Applicant.

Mr. S.G. Bhobe, Advocate for the Respondent.

Coram:- J. N. PATEL, J.

Date:- 17th November, 2006

P.C.:

Heard.

2. Applicant to deposit a sum of Rs.5000/- as process fee as per Rule 12(b) of the Scheme as framed by the Chief Justice of the High Court of Judicature at Bombay within a week's time.

3. The applicant has moved this Court for appointment of Arbitrator in respect of settlement of dispute arising out of the contract between the parties in terms of the contract specified in the communication dated 17th May, 2004 which is annexed to the petition as Exh.D. It is the case of the applicant that he is dealing in construction of buildings, factories, roads, etc. and undertakes contracts for such construction for and on behalf of PWD-CPWD, Mormugao Port Trust and other departments. The respondent invited offers for carrying out civil and structural works of the Multiplex and Utility block. The applicant responded to the offer and pursuant to the applicant's letter dated 15.3.04 there were negotiations between the parties and ultimately the applicant was awarded the contract

by issuing a letter dated 17.05.04 as letter of acceptance.

4. It is the case of the applicant that as the applicant had certain disputes regarding settlement of his bills, he had correspondence with the respondent and as their dues were not paid they sent a letter dated 22.8.05 to M/s Feedback Strategic Consultancy Private Ltd. to appoint a sole Arbitrator in terms of clause 37 of the said contract/agreement within 15 days of the receipt of the said letter for settling the matter along with the statement of claim. The respondent has failed to reply to the said notice nor settled the claim of the applicant and therefore the applicant is required to approach this Court under Section 11 of the Arbitration and Conciliation Act, 1996 and seeks an appointment of Arbitrator. The respondent has not filed any reply to the application.

5. The learned counsel for the applicant submits that as per clause 37 of the General and Special Conditions of Contract which were applicable in the case of works undertaken by the applicant for the respondent, settlement of disputes were to be referred and settled by the PMC to whom notice was given. As the PMC did not respond to the claim of the applicant, the respondent ought to refer the matter for arbitration which under the said clause was to be referred to sole Arbitrator being a senior and experienced PMC as agreed upon by both the parties.

6. The learned counsel appearing for the respondent submitted that the respondent has suggested two names of a senior and experienced PMC, for appointment as sole Arbitrator. The same is not acceptable to the applicant for the reason that if the respondent replied to the notice of the applicant and agreed to refer the dispute to arbitrator, then the applicant was bound by the terms and conditions of appointment of Sole Arbitrator as per the scheme incorporated in clause 37 of the contract which provides for settlement of disputes by referring to sole Arbitrator and therefore this right of the respondent to refer the matter to the sole Arbitrator from the PMC stands extinguished and therefore the Applicant submitted that this Court should appoint any suitable person as an Arbitrator.

7. Considering the fact that there is no controversy about the matter that the dispute deserves to be referred to the Arbitrator for adjudication. This Court appoints Shri Justice G.D. Kamat, former Judge of High Court of Bombay and Chief Justice of Gujarat High Court (Retd.) as sole Arbitrator. The Registrar to communicate this order to the Arbitrator appointed by this Court.

Petition stands disposed of accordingly.

J. N. PATEL, J.

sl.